Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

RONALD KOLODZIECZAK, et al.,

Petitioners,

vs.

JACK WAYNE FRIEND, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Is a plaintiff class of county jail inmates who successfully obtain and secure access to Roman Catholic religious services, sacraments and religious articles within a jail after filing suit a prevailing party for purposes of an award of attorneys' fees pursuant to 42 U.S.C. § 1988?

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STATEMENT OF THE CASE

Respondents are members of a plaintiff class of jail inmates at the Alameda North County jail in Oakland, California. Respondents are inmates of the Roman Catholic faith. They filed suit *in pro per* in 1987[1] contending that county officials had denied them access to religious services, sacraments and religious articles (rosaries and scapulars), while at the same time allowing a Protestant fundamentalist group *to control* religious activities within the North County jail.

The lawsuit had two primary objectives. First, respondents attempted to obtain and secure access to religious services by having jail officials provide them the opportunity for separate services distinct from the Protestant fundamentalist group. They also sought the opportunity to participate in communion and confession. Second, respondents sought the opportunity to possess sacramental articles, rosary beads and scapulars, at all times.

The First Amended Complaint prepared by counsel alleged that

> The confiscation and continuing retention of plaintiffs' rosary beads and scapulars, defendants' practice and policy of prohibiting inmates of the Alameda North County Jail from possessing rosary beads and scapulars, and defendants' failure to provide plaintiffs with access to

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[1] The complaint was prepared and signed in 1986. But the district court did not grant *in forma pauperis* status and order it served until 1987. Order, filed September 17, 1987.

> Roman Catholic religious services and sacraments

violate the Free Exercise Clause of the First Amendment.[2] Moreover, the First Amended Complaint alleged that

> Defendants' failure to provide for scheduled Roman Catholic masses or scheduled visits by a Roman Catholic priest while arranging for services held by Protestants

violates the right to equal protection of the law. First Amended Complaint, paras. 44 and 46.

The prayer sought declaratory and injunctive relief prohibiting confiscation of the rosaries and scapulars *and*

> requiring defendants to arrange for and provide effective and meaningful opportunities for Roman Catholic prisoners to attend mass and participate in the sacraments of communion and confession within the North County Jail.

First Amended Complaint, Prayer, paras. 3 and 4.

When the lawsuit was filed, the Jail Policy Manual contained no provisions for Roman Catholic services or sacraments, and it said nothing about the opportunity to possess rosaries and scapulars during religious services. See, Exhibit G to Appendix to Petition for a Writ of Certiorari, "Section III 5-15, Religious Services," at A79-80. Indeed, there were no services; there were no

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[2] Petitioners inexplicably failed to include a copy of the First Amended Complaint in the Appendix to the Petition for a Writ of Certiorari. A true copy is included in the Appendix to this Brief.

suitable opportunities for communion and confession; and rosaries were confiscated.

The district court certified a class consisting of "all Roman Catholic inmates who are now or will be incarcerated in the Alameda North County Jail." Exhibit E to Appendix to Petition for a Writ of Certiorari. Subsequently, the parties engaged in extensive discovery, which culminated in cross-motions for summary judgment, which were heard on October 24, 1988.

Directly in response to respondents' motion for summary judgment, which was served on August 15, 1988, the petitioners cured many – but not all – of the religious access issues. For example, as a result of the litigation, named plaintiff Jack Wayne Friend met privately with a priest and participated in confession on August 22, 1988, for the first time since his incarceration started in October, 1984. (Declaration of Eugene J. Stelly, Sr. in Support of Plaintiffs' Motion for Summary Judgment, paras. 34-35.) Then the jail captain wrote a letter dated September 15, 1988, announcing that "effective immediately" separate Roman Catholic services would be held in the jail. (Exhibits D and E to Declaration of Sue Ochs in Support of Plaintiffs' Motion for Attorneys' Fees.) The first separately identified Roman Catholic worship services took place in the jail on October 9, 1988 – two weeks before the cross-motions for summary judgment were to be heard. Appendix Q to Petition for a Writ of Certiorari, Transcript of Hearing, October 24, 1988, at A119.

At the hearing, the district court explored with the parties the necessity for a definitive ruling on the cross-motions in light of the changes in jail policy. The court

inquired of the current status with counsel and then stated:

> We're talking about the day-to-day operations of an institution when you have different people coming on in different shifts and who may have differing interpretations of what a, quote, policy is.
>
> So what I am going to do is ask that – that the defendants come up with, in writing, a policy that addresses the issues in this case. I mean, if you want to work it in with, you know, another standing policy, obviously, that's probably preferable for your management purposes, but I'm only concerned about those issues that are addressed here.
>
> And I want to give you a chance to do that first rather than my doing it. I don't want to run the jail or this aspect of it, or whatever, but if there's a failure of will on your part, then I'll have to do something about it.

Appendix Q to Petition for Writ of Certiorari, Transcript of Hearing, October 24, 1988, at A127. The court ordered the parties to attempt finally to resolve the dispute by

> reduc[ing] to writing the policy with respect to separate location and a specific time for services for Catholic inmates, and the type of place where that – where those services will be held, and those who will be given access to the jail for the purpose of conducting those services, and the other items, sacraments and so forth. That – and items for those sacraments that will be permitted in the services, that . . . the policy with respect to a place for confession be reduced to writing.

Appendix Q to Petition for Writ of Certiorari, Transcript of Hearing, October 24, 1988, at A128.

Petitioners implemented the policy changes pertaining to religious access. However, they subsequently asked the district court to rule on the summary judgment motions solely with respect to respondents' asserted right to the possession of rosaries and scapulars at all times. On September 29, 1989, the district court granted petitioners' summary judgment motion, holding that jail officials can prohibit unfettered possession of rosaries and scapulars. Appendix F to Petition for a Writ of Certiorari. But the court ordered petitioners, as a condition of final dismissal of the lawsuit, to submit a final written policy addressing the other religious access issues, which had been previously conceded by petitioners and resolved. *Id.* at A78.

Petitioners submitted a revised written policy, securing the rights of the class of Roman Catholic inmates in connection with services, sacramental acts, and possession of rosaries and scapulars during services. Appendix G to Petition for a Writ of Certiorari. As the Court of Appeals recognized in its first opinion in this case:

> The defendants' alleged failure to grant the plaintiffs access to Roman Catholic services and sacraments was no longer in issue, because the defendants scheduled a regular time and location for Roman Catholic services, promulgated rules allowing inmates an opportunity to participate in the Roman Catholic sacraments of confession and communion, and established a policy allowing inmates to use rosaries and wear scapulars during religious services and meetings with religious visitors.

Friend v. Kolodzieczak, 923 F.2d 126, 127 (9th Cir. 1991); Exhibit B to Appendix to Petition for a Writ of Certiorari.

The new Operational Order No. 1, which is the result of this lawsuit, provides, in part:

> * Purpose: To insure inmates are afforded the opportunity of religious worship.
>
> * Separate Catholic services will be allowed each Sunday between the hours of 7:30 to 9:30 a.m. in the multipurpose room on any floor . . . and Monday evenings, 7:30 p.m. to 9:30 p.m. . . . .
>
> * When an inmate notifies staff that he desires to practice his religion and requests to be administered to by his faith's practitioner, . . . staff shall make reasonable efforts to accommodate the request. . . . If the inmate does not identify a particular practitioner, staff will attempt to contact the religious body involved. [In the case of Catholic inmates, staff will contact Catholic Charities, Diocese of Oakland.]
>
> * When an inmate's religious practice calls for a private consultation with his religious practitioner, staff shall make every reasonable effort to make an area available for this purpose and shall use reasonable efforts to assure the privacy of the consultation. A private consultation includes, but is not limited to, an inmate's confession to his practitioner.
>
> * Religious items allowed only during religious services are those which present only a moderate security threat. Examples include a rosary or a scapular. . . .

See Exhibit H to Appendix to Petition for a Writ of Certiorari (footnote omitted, brackets in original).

Following receipt of the new policy – which is directly acknowledged in the district court's order of dismissal – the court dismissed the case. Appendix I to Petition for Writ of Certiorari at A-85-86. Respondents appealed the merits solely with respect to the possession of rosaries and scapulars outside religious services. The court of appeals affirmed. *Friend v. Kolodzieczak,* 923 F.2d 126, 127 (9th Cir. 1991); Exhibit B to Appendix to Petition for a Writ of Certiorari.

Subsequently, respondents moved the district court for an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 for the time spent in connection with issues upon which the class had prevailed. They did not seek fees solely related to the issues that were adversely decided on appeal, including any compensation for the first appeal. (Plaintiffs' Memorandum in Support of Motion for Attorneys' Fees.)

Since respondents had engaged in extensive discovery and briefed all issues in preparation for the motion for summary judgment, they asked the district court to compensate them for all work reasonably expended on the religious access issues, except time spent solely on the rosary and scapular questions. The district court found that "Plaintiffs partial success on the religious access matter has materially altered the North County Jail's policy by accommodating Catholic inmates' requests for participation in Roman Catholic services and sacraments. Plaintiffs have thus prevailed on a significant portion of relief sought." Appendix J to Petition for a Writ of Certiorari at A92.

The district court then performed the analysis required by *Hensley v. Eckerhart*, 461 U.S. 424 (1983) before fixing the amount of the fee award, as $72,445.00, plus expenses of $6,462.22. Appendix L to Petition for Writ of Certiorari at A101-102.[3] *Ia.* at A95, A102.

Petitioners appealed the award of fees and costs. The appeal only raised the issue of entitlement to the award. The court of appeals affirmed on May 19, 1992, applying the settled principle that "a party may recover its attorney's fees if it 'succeed[s] on any significant issue in litigation which achieves some of the benefit . . . sought in bringing suit.' " *Friend v. Kolodzieczak*, 965 F.2d 682, 684 (9th Cir. 1992); Appendix A to Petition for a Writ of Certiorari. *See Farrar v. Hobby*, 506 U.S. ___, 113 S.Ct. 566, 121 L.Ed.2d 494, 503 (1993). In affirming the judgment the court of appeals recognized that "The district court concluded correctly that the pre-litigation settlement materially altered the legal relationship of the parties. This is '[t]he touchstone of the prevailing party inquiry.' " *Id.* at 685 (citing, *Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792-93 (1989)). The court noted that "the district court found, Alameda County officials took actions before trial that gave the inmates benefits they sought in filing suit." *Id.* at 684. Further, "[t]he district court found that plaintiffs partially prevailed on their

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[3] The court also awarded $14,875.50 for time spent on the motion for fees. Appendix L to Petition for Writ of Certiorari.

Petitioners' statements in the Petition that the district court awarded over $150,000 in fees (Question Presented I.A., and see p. 20) misstates the record and is obviously meant to attract attention rather than accurately reflect the judgment.

claim for inmate possession of religious articles." *Id.* at 685.

A petition for a writ of certiorari to this Court followed. It coincided with this Court's consideration and decision in *Farrar,* which was decided on December 14, 1992. Several weeks after that decision the Court granted certiorari in this case, vacated the judgment and remanded for reconsideration in light of *Farrar. Kolodzieczak v. Friend,* No. 92-292, ___ U.S. ___, 122 L.Ed.2d 348 (1993). On the same day the Court also granted, vacated and remanded two other cases in light of *Farrar. American Council of the Blind v. Romer,* No. 92-217, ___ U.S. ___, 122 L.Ed.2d 348 (1993); *Nichols v. Romberg,* No. 92-402, ___ U.S. ___, 122 L.Ed.2d 348 (1993).

Following the remand the district court reaffirmed its award of attorneys' fees. The court noted that "in making its original award, it relied on the same precedent that is re-affirmed in *Farrar." Friend v. Kolodzieczak,* ___ F.3d ___ (9th Cir., December 21, 1995) (Amended Order, Dissent, and Denial of Rehearing), Appendix to Petitioners' Supplemental Brief at 11a. The district court explained:

> The plaintiffs in the instant case achieved far more than the type of 'technical' or 'de minimus' victory won by the plaintiffs in *Farrar,* and the fee award originally ordered is reasonable. The plaintiffs here requested primarily injunctive relief and were for the most part successful in obtaining the relief they requested. . . . The changes accomplished were the result of the instigation of this lawsuit. . . . The record establishes that without this action defendants would not have developed the policy ultimately adopted in this case. This result was more than

> merely 'technical'; it 'materially alter[ed] the legal relationship between the parties' in a manner that was meaningful and substantial. *Farrar*, 113 S.Ct. at 574.

Id. at 9a-11a. The court concluded that "In short, there is nothing in *Farrar* that affects this court's original analysis of the reasonableness of the attorneys' fees in this case." *Id.* at 12a.[4]

The Court of Appeals affirmed for the reasons stated by the district court, including the district court's discussion and conclusion that plaintiffs are prevailing parties. *Id.* at 4a. The petition for rehearing having been denied on December 21, 1995, and rehearing en banc having been rejected, petitioners once again have come to this court seeking reexamination of the district court's findings.

REASONS FOR DENYING THE WRIT

We are not certain what issue of law the petitioners seek to bring before this Court. Their questions presented are a jumble of buzz words meant to attract attention without clearly delineating the principles that they would have this Court resolve. They do not point to any conflict with decisions of other courts of appeals or state courts of last resort.

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[4] The Court went on to fix the amount of fees to be awarded for work on the remand proceedings, and fixed the interest rate on the original judgment, pursuant to 28 U.S.C. § 1961(a). These determinations were not subsequently challenged on appeal.

Instead, petitioners attempt to invoke the Court's supervisory power, inviting it to reexamine factual findings twice determined by both the district court and the court of appeals. But resolution of factual disputes is the province of lower courts.

> A court of law, such as this Court is, rather than a court of correction of errors in factfinding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.

Graver Mfg. Co. v. Linde Co., 336 U.S. 271, 275 (1949). The "two-court rule" is fully applicable in this case. *See, Goodman v. Lukens Steel Co.*, 482 U.S. 656, 665 (1987); *United States v. Reliable Transfer Co.*, 421 U.S. 387 (1989). This is especially appropriate in attorneys' fees cases "in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

The court of appeals applied settled law in making its determination that respondents partially prevailed in this class action. *Farar v. Hobby, supra; Texas State Teachers Assn. v. Garland Indep. Sch. Dist.*, 489 U.S. 782 (1989); *Hewitt v. Helms*, 482 U.S. 755 (1987). Indeed, *Farrar* reaffirmed that fees may be awarded for an enforceable judgment or "comparable relief through a consent decree or settlement." 121 L.Ed.2d at 503. Where equitable relief is sought, a change in the "behavior of the defendant toward the plaintiff" is all that is required. *Rhodes v. Stewart*, 488 U.S. 1, 4 (1989).

Although petitioners claim that the attorneys' fees award intrudes on their ability to operate their jail, the award does nothing of the sort. Petitioners, themselves, wrote the new jail policy that secures the rights of the respondent class of jail inmates. Petitioners settled the aspects of the case for which fees and costs were awarded. Petitioners were not required to settle; in fact, they adamantly refused to settle on the rosary/scapular issues and were vindicated on those issues by the same district court which they accuse in the Petition of forcing them to settle. Petition for a Writ of Certiorari at 6. Petitioners' claim that the attorneys' fees award intrudes on the administration of the jail (*id.* at 13) is plainly an "exaggerated response," *Turner v. Safley*, 482 U.S. 78, 90 (1987), because the fee award itself does not intrude on jail administration. It simply orders the payment of money following final resolution of the merits of the case.

Petitioners would have this Court reopen the merits of this entire litigation to reexamine the necessity of the concessions they made on the eve of the cross-motions for summary judgment in 1988. There is no procedural or substantive reason to do so. Plaintiffs' lawsuit raised on behalf of Catholic prisoners in a county jail, one of the most important rights we possess as Americans, the right to practice our religions. *See Lukumi Babalu Aye, Inc. v. City of Hialeah*, ___ U.S. ___, 124 L.Ed.2d 472 (1993). Some accommodation of religious needs in the prison context is required, where, as in this case, it is done by the prison administrators themselves and does not intrude upon prison administration. *O'Lone v. Shabazz*, 482 U.S. 342, 351-52 (1987); *Turner v. Safely, supra.*

Farrar enunciated the principles governing fee awards in cases involving minimal or no relief. The Court of Appeals in this case reviewed the district court's order on remand in light of *Farrar*. There is nothing in the Petition or in the case at this point that warrants review by the Court.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Dated: January 22, 1996

Respectfully submitted,

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APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JACK WAYNE FRIEND, on behalf of himself and all others similarly situated, JEFFREY DEE GRAY, and MICHAEL WETHERN, Plaintiffs, vs. RONALD KOLODZIECZAK, CHARLES PLUMMER, Sheriff of Alameda County; MORRIS L. HICKERSON, Captain of Alameda North County Jail, DEAN COMPTON, Deputy for Prisoners' Affairs-Inmate Services Officer; HAROLD ESTES, R.A. FRIST, CHUCK GREEN, A. THEOBALD, and COUNTY OF ALAMEDA, Defendants.	NO. C 87-0161 MHP CLASS ACTION FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES DEMAND FOR JURY TRIAL (Filed Sept. 17, 1987)

INTRODUCTION

1. This is a class action complaint for injunctive and declaratory relief and individual damages arising from the refusal of the Alameda County Sheriff's Department and Officials of Alameda County to allow plaintiffs the opportunity to exercise their constitutionally protected right to practice their religion at the North Alameda County Jail in Oakland, California. Plaintiffs allege that defendants deny plaintiffs and the proposed class the opportunity to attend Roman Catholic religious services and to participate in religious sacraments performed by a Roman Catholic priest. Plaintiffs further allege that defendants prohibit the possession of scapulars and rosary beads, sacramental articles of the Roman Catholic faith. Plaintiffs allege that their rights under the United States Constitution and the California Constitution and laws have been and continue to be violated.

JURISDICTION

2. This case is brought pursuant to 42 U.S.C. § 1983 with pendent state claims. Therefore jurisdiction is based upon 28 U.S.C. §§ 1331 and 1343. This court also has pendent jurisdiction over the state claims.

PARTIES

3. Plaintiff JACK WAYNE FRIEND is a pre-trial detainee of the County of Alameda. He has been incarcerated at the North County Jail in Oakland since October 1984, awaiting trial on charges of felony murder with

special circumstances. Plaintiff could face a sentence of death if he is found guilty.

4. Plaintiff JEFFREY DEE GRAY is and was at relevant times a prisoner of the County of Alameda incarcerated at the North County Jail in Oakland.

5. Plaintiff MICHAEL WETHERN was a prisoner of the County of Alameda incarcerated at the North County Jail in Oakland. He is currently incarcerated at San Quentin State Prison in San Quentin, California.

6. The COUNTY OF ALAMEDA is a political subdivision of the State of California with the capacity to sue and be sued and is also a "person" for purposes of 42 U.S.C. § 1983, because the allegations herein are based on its policies, customs and practices.

7. CHARLES PLUMMER is the Sheriff of Alameda County, and is responsible for establishing the policies and practices of its jails, including the North County Jail. He is further responsible for the direction and supervision of its subordinate officials and employees, including officials and employees of the North County Jail.

8. MORRIS L. HICKERSON is the Captain of Detention and Corrections Division – Alameda North County Jail, and is responsible for the administration of the North County Jail, including the establishment of its policies and practices, and for the supervision and control of all its employees.

9. DEAN COMPTON is the Deputy for Prisoner Affairs-Prisoner Services Officer at the Alameda North

County Jail and is responsible for receiving and responding to inmate requests for religious counselling, visits, sacraments or services.

10. Defendants KOLODZIECZAK, ESTES, GREEN, FRIST and THEOBALD are all employees of the Alameda County Sheriff's Department, who were at times relevant herein, officers at the North County Jail. Each ordered, authorized or performed the confiscation or retention of personal religious articles from plaintiffs FRIEND, GRAY, or WETHERN.

11. At all times mentioned herein, the defendants, and each of them, were employees of the Alameda County Sheriff's Department and the COUNTY OF ALAMEDA.

CLASS ACTION ALLEGATIONS

12. This action is maintainable as a class action under Federal Rules of Civil Procedure 23 (a) and (b) (1)-(2).

13. Plaintiff JACK WAYNE FRIEND brings this action for declaratory and injunctive relief on behalf of himself and all other Roman Catholic prisoners who are or will be incarcerated in the Alameda North County Jail. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class, the claims of the named plaintiff is typical of the claims of the class, and the named plaintiff will fairly and adequately represent the interests of the class. Additionally, the prosecution of separate actions by individual members of the class would create the risk of

inconsistent adjudications which would establish incompatible standards of conduct for defendants. Defendants have acted and continue to act on grounds generally applicable to all members of the proposed class, thereby making declaratory and injunctive relief appropriate with respect to the class as a whole.

FACTS

14. At all times mentioned herein, defendants and each of them were acting under color of state law and in furtherance of and accordance with the policies and practices of defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, and MORRIS L. HICKERSON.

15. Plaintiffs JACK WAYNE FRIEND and MICHAEL WETHERN are members and practitioners of the Roman Catholic faith. Plaintiffs' religious beliefs are sincerely held.

DENIAL OF THE RIGHT TO POSSESS ROSARY BEADS AND SCAPULARS

16. The use of rosary beads and the wearing of a cloth scapular are an integral part of plaintiffs' practice and expression of their faith and are long-held traditions of Roman Catholicism.

17. Rosary beads are used to count prayers while praying.

18. Scapulars are symbols of Mary, the mother of Jesus. For Roman Catholics such as plaintiffs JACK WAYNE FRIEND and MICHAEL WETHERN, the wearing

of the scapular invokes the protection of Mary and the promise of salvation and eternal life.

19. It is the policy of defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, and MORRIS L. HICKERSON, and the practice of all defendants to prohibit prisoners in the North County Jail from possessing rosary beads and cloth scapulars, and to confiscate such items from prisoners when they are discovered to possess them.

20. In July 1986, the rosary of plaintiff JEFFREY DEE GRAY was confiscated by defendant A. THEOBALD. Defendant CHUCK GREEN refused plaintiff's request to return the beads based on the order of defendant HAROLD ESTES.

21. In July 1986, the rosary of plaintiff MICHAEL WETHERN was confiscated by defendant FRIST. Plaintiffs are informed and believe, and therefore allege on information and belief, that defendant RONALD KOLODZIECZAK ordered the confiscation after plaintiff WETHERN showed defendant KOLODZIECZAK his rosary beads in the course of a discussion concerning a grievance plaintiffs MICHAEL WETHERN and JACK WAYNE FRIEND had filed on behalf of plaintiff JEFFREY DEE GRAY concerning the confiscation of plaintiff GRAY'S rosary beads.

22. In July 1986, during a cell check by North Alameda County jail employees, the rosary of plaintiff JACK WAYNE FRIEND disappeared.

23. In confiscating the rosary beads of plaintiffs JACK WAYNE FRIEND, MICHAEL WETHERN, and

JEFFREY DEE GRAY, defendants were acting pursuant to the official policy of defendants COUNTY OF ALAMEDA, CHARLES PLUMMER and MORRIS L. HICKERSON.

24. The rosary beads possessed by plaintiffs and confiscated by defendants were plastic beads strung on either narrow gauge soft fiber or plastic string.

25. Plaintiffs are informed and believe, and therefore allege on information and belief, that possession of plastic rosary beads by inmates of the Alameda North County Jail poses no threat to the safety of plaintiffs, other inmates or employees of the Sheriff's Department and confiscation of these articles is not related to any important legitimate penological interest.

26. In May, 1986, plaintiff JACK WAYNE FRIEND'S scapular was confiscated by an officer with the initials "D.H." and badge number 4007. On or about September 7, 1986, plaintiff's request for the return of his scapular were denied. The explanation given was "not allowed to have at NCJ per Sgt."

27. In November 1987, plaintiff JEFFREY DEE GRAY requested the return of his scapular so he could have it with him during his trial. His request was denied and the explanation given was "[s]orry we are not allowed to issue scapulars, rosarys [sic], or other items like that to inmates."

28. In confiscating the scapulars of plaintiffs JACK WAYNE FRIEND and JEFFREY DEE GRAY, defendants were acting pursuant to the official policy of defendants

COUNTY OF ALAMEDA, CHARLES PLUMMER and MORRIS L. HICKERSON.

29. The cloth scapulars possessed by plaintiffs and confiscated by defendants consist of two small religious pictures attached to cloth string, worn over the shoulders, one picture in front, and one in back. Plaintiffs wore their scapulars under their clothing.

30. Plaintiffs are informed and believe, and therefore allege on information and belief, that wearing cloth scapulars beneath the clothing poses no threat to the safety of plaintiffs, other inmates or employees of the Sheriff's Department and the prohibition of this practice is not related to any important legitimate penological interest.

DENIAL OF ACCESS TO SCHEDULED ROMAN CATHOLIC SERVICES AND ROMAN CATHOLIC SACRAMENTS

31. Defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, MORRIS L. HICKERSON, and DEAN COMPTON arrange for, provide, facilitate and permit weekly scheduled Protestant religious services in the North County Jail.

32. Plaintiffs are informed and believe, and therefore allege on information and belief, that defendants maintain only one time slot per week for inmates to attend organized religious services and this time slot is reserved by defendants solely for the services conducted by a Protestant Fundamentalist group known as Follow Up Ministries.

33. Defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, MORRIS L. HICKERSON, and DEAN COMPTON do not arrange for, facilitate or otherwise provide effective and meaningful opportunities for Roman Catholic prisoners to attend mass and participate in the sacraments of confession and communion.

34. Since October 1984, when plaintiff JACK WAYNE FRIEND was first incarcerated, there have been no scheduled Roman Catholic religious services held at the North County Jail, and there have been no masses performed by a Roman Catholic priest within the North County Jail.

35. Plaintiffs are informed and believe, and therefore allege on information and belief, that weekly bible study groups sanctioned, arranged, facilitated and provided for by defendants COUNTY OF ALAMEDA, CHARLES PLUMMER, MORRIS L. HICKERSON, and DEAN COMPTON and held within the Alameda North County Jail are conducted or overseen by Follow Up Ministries which does not allow Roman Catholic teachings to be presented therein.

36. There are no scheduled visits by Roman Catholic priests to the prisoners at the North Alameda County Jail.

37. Since October, 1984, plaintiff JACK WAYNE FRIEND has repeatedly written letters and request slips to various deputies, sergeants and prison administrators requesting that the administration schedule Roman Catholic religious services and sacraments to be performed by a Roman Catholic priest at the North County Jail. Plaintiff's requests have been denied or ignored.

38. From October 1984, through early March 1988, plaintiff JACK WAYNE FRIEND had no personal contact with a Catholic priest. In late March, 1988, he was able to see a priest but was not able to make confession to the priest because defendants failed to provide a private setting for the visit.

39. It is plaintiff FRIEND'S sincerely held belief that in order to practice his religion properly, he must participate in the sacraments of confession and holy communion administered by a priest of the Roman Catholic church.

40. Defendants' continuing denial of plaintiffs' right to possess religious articles and their continued failure to provide plaintiffs access to Roman Catholic religious services and participation in sacraments performed by a Roman Catholic priest is causing plaintiffs irreparable harm as it prevents them from outwardly manifesting their religious commitments, worshipping in accordance with the tenets of the Roman Catholic faith, and receiving the sacraments of Roman Catholicism.

41. The individual defendants herein acted with reckless or callous indifference to the rights of plaintiffs JACK WAYNE FRIEND, JEFFREY DEE GRAY, and MICHAEL WETHERN.

42. As a proximate result of the policies and acts of the defendants, plaintiffs JACK WAYNE FRIEND, JEFFREY DEE GRAY, and MICHAEL WETHERN have suffered damages, injury, and a loss of their rights guaranteed by the United States Constitution.

FIRST CLAIM FOR RELIEF
(Free Exercise of Religion – Federal)

43. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 42.

44. The confiscation and continuing retention of plaintiffs' rosary beads and scapulars, defendants' practice and policy of prohibiting inmates of the Alameda North County Jail from possessing rosary beads and scapulars, and defendants' failure to provide plaintiffs with access to Roman Catholic religious services and sacraments performed by a Roman Catholic priest, violate the free exercise clause of the First Amendment as incorporated into the Fourteenth Amendment.

SECOND CLAIM FOR RELIEF
(Denial of Equal Protection – Federal)

45. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 44.

46. Defendants' failure to provide for scheduled Roman Catholic masses or scheduled visits by a Roman Catholic priest while arranging for services held by Protestants violates plaintiff's right to equal protection of the law under the Fourteenth Amendment to the United States Constitution.

THIRD CLAIM FOR RELIEF
(Due Process – Federal)

47. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 46.

47 [sic]. Defendants' past and continuing arbitrary treatment of plaintiffs is a denial of due process under the Fourteenth Amendment to the United States Constitution.

FOURTH CLAIM FOR RELIEF
(Declaratory Judgment 28 U.S.C. § 2201 [a])

49. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 48.

50. An actual controversy exists between the parties.

51. The parties are entitled to a declaration of their rights and liabilities.

FIFTH CLAIM FOR RELIEF
(Free Exercise of Religion – State)

52. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 51.

53. The confiscation and continuing retention of plaintiffs' rosary beads and scapulars, defendants' practice and policy of prohibiting the possession of rosary beads and scapulars, the failure to provide for scheduled

Roman Catholic masses and scheduled visits by a Roman Catholic priest while arranging for visits and services held by Protestants violate Article I, § 4 of the California Constitution.

SIXTH CLAIM FOR RELIEF
(Free Exercise of Religion – Pen. Code § 4027)

54. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 53.

55. The confiscation and continuing retention of plaintiffs' rosary beads and scapulars and defendants' practice and policy of prohibiting inmates of the Alameda North County jail from possessing rosary beads and scapulars violates the guarantee of Cal. Pen. Code § 4027 to prisoners in county detention facilities of the opportunity to exercise religious freedom.

SEVENTH CLAIM FOR RELIEF
(Equal Protection – State)

56. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 55.

57. Defendants' failure to provide for scheduled Roman Catholic masses or scheduled visits by a Roman Catholic priest while arranging for services held by Protestant clergy violates plaintiff's right to equal protection of the law under Article I, § 7 of the California Constitution.

EIGHTH CLAIM FOR RELIEF
(Due Process – State)

58. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 57.

59. Defendants' past and continuing arbitrary treatment of plaintiffs is a denial of due process under Article I, § 7 of the California Constitution.

PRAYERS FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

1. For an order certifying the class.

2. For a declaration that plaintiff JACK WAYNE FRIEND and the class he seeks to represent have a constitutionally protected right to possess rosary beads, wear cloth scapulars under their clothing, and have effective and meaningful opportunities to attend Roman Catholic mass and participate in the sacraments of confession and communion.

3. For preliminary and permanent injunctions enjoining defendants, their successors, agents, employees, and all persons working in concert or participation with them, from confiscating rosary beads and scapulars belonging to prisoners, from failing to return such articles to inmates from whom they have been confiscated, and from prohibiting possession of rosary beads and scapulars.

4. For preliminary and permanent injunctions requiring defendants to arrange for and provide effective

and meaningful opportunities for Roman Catholic prisoners to attend mass and participate in the sacraments of communion and confession within the North County Jail.

5. For compensatory damages against all defendants in an amount according to proof.

6. For punitive damages against the individual defendants in an amount according to proof.

7. For costs and reasonable attorneys fees pursuant to 42 U.S.C. § 1988.

8. For such further relief as the court deems proper.

Dated: April 18, 1988

LAW OFFICES OF
AMITAI SCHWARTZ

By: Amitai Schwartz
Amitai Schwartz